

REMARKS/ARGUMENTS

At the outset, Applicant appreciates the thorough review and consideration of the subject application. The Final Office Action of March 21, 2008 has been received and its contents carefully noted. By this Amendment, claim 23 has been amended, claim 25 has been canceled without prejudice or disclaimer to the subject matter contained therein, and claims 26-31 have been added. Accordingly, claims 1-12, 23-24, and 26-31 are currently pending in the application. Support for these amendments is provided in at least Figures 1-5C and related text of the specification. No new matter has been added.

In view of the above amendments and the following remarks, Applicant respectfully requests reconsideration and timely withdrawal of the pending objections and rejections for the reasons discussed below.

Interview Summary

Applicant's representative wishes to thank the Examiner for the courtesies extended during the interview of July 10, 2008. During the interview, Applicant's representative and the Examiner discussed the items presented in the interview request form. Applicant disagrees with the Examiner's characterization of *KSR Int'l Co. v. Teleflex Inc.* (KSR), namely that nothing is patentable under KSR. One of Applicant's reasons for disagreeing will be addressed further in this Response. Applicant also expressed concern about the clarity of rejection(s) and requested clarification. No agreement was reached during the interview.

Rejections Under 35 U.S.C. § 103

Claim 25 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over either U.S. Patent No. 5,294,110 issued to Jenkins, *et al.* ("Jenkins") or U.S. Patent No. 6,059,672 issued to Zeiner-Gundersen, *et al.*

("Zeiner") each in view of either U.S. Patent No. 3,059,926 issued to Johnstone ("Johnstone") or U.S. Patent No. 5,283,732 issued to Mauritz ("Mauritz"). Applicant respectfully submits this rejection is moot in view of the cancellation of claim 25. Accordingly, Applicant respectfully requests withdrawal of the 35 U.S.C. § 103(a) rejection.

Claim 23 stands rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over either Jenkins or Zeiner each in view of either U.S. Patent No. 5,898,484 issued to Harris ("Harris") or U.S. Patent No. 5,933,224 issued to Hines, *et al.* ("Hines"). Applicant respectfully submits this rejection is moot in view of the amendment to independent claim 23. Accordingly, Applicant requests withdrawal of the rejection.

Claims 1-7, 10-12 and 24 stand rejected under 35 U.S.C. § 103(a) as being allegedly unpatentable over Zeiner in view of either Johnstone or Mauritz as applied to claim 25, and further in view of either Harris or Hines. Claims 1-5, 8-12, and 24-25 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Jenkins in view of either Johnstone or Mauritz as applied to claim 25, and further in view of either Harris or Hines. Applicant respectfully traverses this rejection for at least the following reasons.

At the outset, Applicant respectfully requests clarification of the rejection and cancellation of one of the rejections. That is, it is unclear exactly what features of claim 1 are being rejected by Jenkins and cured by either Johnstone, Mauritz, Hines or Harris. In addition, it is also unclear exactly what features are being rejected by Zeiner and cured by either Johnstone, Mauritz, Hines or Harris. Applicant notes it is the Examiner's duty to make the "best rejection" for clarity of the record and respectfully requests simplification of the record in order to expedite prosecution. See MPEP 700 and 2100. That is, Applicant requests that any unnecessary rejection, e.g., cumulative rejection, be canceled. Moreover, Applicant requests that

the Examiner's use of "shorthand" rejections by using terms like "or" and "either" be omitted and that a full rejection with regard to the combination of references be substituted. Nevertheless, Applicant understands the rejection as Jenkins or Zeiner allegedly teaching all the features of claim 1 but allegedly failing to teach the laser rangefinder. Johnstone, Mauritz, Hines or Harris are used individually to cure the deficiencies of Jenkins or Zeiner. That is, there appears to be eight different rejections of independent claim 1. These rejections are now addressed.

Independent claim 1 is allowable as it recites a combination of elements including, *inter alia*, "a data store associated with said instrument and said user input for maintaining said at least one golf club type and said at least one representative user range as a first correlated data set." The applied art of record fails to teach or suggest at least these features.

The Examiner appears to purport that Zeiner discloses these features in stating, "associated representative user range for said at least one club type to a data store associated with a range finding instrument (2:18-19, 3:39-41, and 56-57, 5:63-6:2, ref. 14)." (Office Action at 5). It is noted that the Examiner appears to have failed to consider the features as recited above. That is, the Examiner's characterization of the claimed features as shown above fails to consider that the data store of the invention maintains a first correlated data set including at least one golf club type and one user. Moreover, the cited portions of Zeiner also fail to teach or suggest at least these features. For example, ref. 14 is an input means, not a data store. Moreover, the Examiner purports these features are inherent features of Zeiner by stating "a data store (implicit microprocessor 20 contains memory)." (Office Action at 3). Again, the Examiner appears to fail to consider that the data store of the invention maintains a first correlated data set including at least one golf club type and one user. Clearly, these features would not be inherent features of a microprocessor, that is, even assuming *arguendo* that a microprocessor may include

some cache memory—whether or not cache is inherent has no bearing on whether the allegedly inherent cache is configured to maintain a first correlated data set including at least one golf club type and one user as recited in independent claim 1. For at least these reasons Zeiner fails to teach or suggest all the features of independent claim 1. In addition, Johnstone, Mauritz, Hines or Harris fail to cure the deficiencies of Zeiner. For at least these reasons, Applicant respectfully requests withdrawal of Zeiner and Johnstone, Mauritz, Hines or Harris rejections.

In addition, Jenkins also fails to teach or suggest the foregoing features. In particular, the Examiner purports Jenkins discloses these features by stating a “data store (ref. 67, 69, 71, 73).” (Office Action at 2). Again, Applicant notes that the Examiner has failed to consider all the features of claim 1 and respectfully requests examination and consideration of those features as discussed herein. With reference to FIG. 4 and in contrast to the Examiner’s assertions, Jenkins discloses an internal ROM cartridge containing ball flight paths (67); clearly this is not a data store as recited in claim 1. Moreover, Jenkins discloses a RAM (71), non-volatile memory containing user’s club distance statistics (69) and an interface port for CD ROM (73). However, there appears to be no discussion of “a data store associated with said instrument and said user input for maintaining said at least one golf club type and said at least one representative user range as a first correlated data set” as recited in independent claim 1. (emphasis added).

Moreover, as admitted by the Examiner, both Zeiner and Jenkins fail to teach or suggest a laser rangefinder. The Examiner tries to cure these deficiencies by appearing to rely on either Harris or Hines as allegedly teaching a laser range finder. The Examiner also purports “it would have been obvious to an artisan to substitute one method [teachings of Zeiner/Jenkins] . . . to achieve the predictable result of input of range to target.” (Office Action at 6). Applicant respectfully traverses these combinations as being based upon impermissible hindsight. *Ortho-McNeil Pharm.*

Inc. v. Mylan Labs. Inc., 520 F.3d 1358 (Fed. Cir. 2008) (rejecting the Office's combination based upon a finite number of identifiable predictable solutions that a person of ordinary skill in the art would have good reason to pursue as simply retracing the inventor's path with hindsight and discounting the number and complexity of alternatives). Clearly, the Examiner has failed to consider the complexity of a laser rangefinder instrument. In addition, there is no reasonable expectation of success by, e.g., simply substituting a laser rangefinder in a system designed for a mil-radian process.

Newly Added Claims

Newly added claims 26-31 are directed to features of the invention, which are not disclosed or suggested in the art of record. Accordingly, Applicant respectfully submits that claims 26-31 are also in condition for allowance.

CONCLUSION

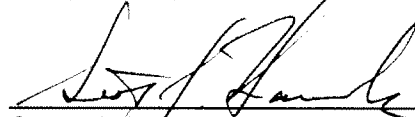
Applicant believes that a full and complete response has been made to the pending Office Action and respectfully submits that all of the stated objections and grounds for rejection have been overcome or rendered moot. Accordingly, Applicant respectfully submits that all pending claims are allowable and that the application is in condition for allowance. Should the Examiner feel that there are any issues outstanding after consideration of this Response, the Examiner is invited to contact the Applicant's undersigned representative at the number below to expedite prosecution. Prompt and favorable consideration of this Reply is respectfully requested.

Serial No. 10/801,425
Reply to Final Office Action of March 21, 2008

Please charge deposit account \$1,270, \$810 for a Request for Continued Examination and \$460 for a Two Month Extension of Time. No additional fee is believed due for this submittal, however, any fee deficiency associated with this submittal may be charged to Deposit Account No. 50-1123.

August 21, 2008

Respectfully submitted,



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